THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.13707 of 2001

ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The Petitioner seeks a writ of Certiorari for quashing the judgment of the Special Court under A.P. Land Grabbing (Prohibition) Act (for short, the Act'), Hyderabad, dated 01-09-1999, passed in L.G.C.No.113 of 1996.

The petitioner is the 12th respondent in L.G.C.No.113 of 1996 and the first respondent herein which is a society is the applicant. Second respondent is the first respondent therein. The applicant filed the application under Section 8 (1) of the A.P. Land Grabbing (Prohibition) Act for declaring the respondents as land grabbers and for delivery of vacant possession of the land in dispute. The land in dispute is a vast extent of about 10000 square yards covered by Sy.Nos.129/34 and 129/35 of Shaikpet village, situate at Road No.12, Banjara Hills, Hyderabad.

The case of the applicant was that it entered into an agreement of sale for purchasing an extent of 28086 square yards of open land covered by Sy.Nos.129/34 and 129/35 of Shaikpet village in plots 6, 7, 8 (part), 9 and 10, out of the sanctioned lay out of the year 1969 from its owners, R30 and R35 to R37 under an agreement of sale, dated 01-01-1976. Before the sale deed could be executed executed the Urban Land Ceiling Act (Act 33/76) came into effect. Respondents 30 and 35 to 37 applied to the Government for exemption under Section 20 (1) (b) of the said Act, so as to enable them to execute a sale deed in favour of the applicant. When the Government granted exemption under G.O.Ms.No.269, dated 09-02-1979, the respondents failed to execute the sale deed. The applicant, therefore, filed a suit in O.S.No.146 of 1984, on the file of the Additional Chief Judge, City Civil Court, Hyderabad, for specific performance of the said agreement of sale. Eventually, the suit was decreed on 08-04-1987. The defendants therein filed the appeal in C.C.C.A.No.60 of 1987, which ended in dismissal by the High Court on 08-06-1990. In execution of the decree, since the defendant/judgment debtor failed to execute the sale deed, pursuant to the decree the Court executed a sale deed in favour of the applicant and got it registered on 18-02-1993.

While so, the respondents trespassed into the land in dispute in an extent of 10000 square yards, in or about the month of May, 1993. On the complaint given by the applicant, the Panjagutta Police registered a crime under Section 447 of the Indian Penal Code on 14-05-1993 against, one, Mohammed Zaheeruddin and eight others. They were prosecuted before the XXIII Metropolitan Magistrate, Hyderabad, and eventually they were convicted and sentenced to pay a fine of Rs.30/- each in S.T.C. Nos.656 and 657 of 1993 by the judgment dated 20-07-1993. The respondents, however, not allowing the office bearers of the society to enter into the said site for starting construction work for its members.

The first respondent resisted that application on the premise that the land in dispute was the Government land and Government granted pattas to about 250 slum dwellers in 1986 and that the allottees were in possession and enjoyment of their respective plots having constructed houses thereon and therefore he was not a land grabber. He assailed the sale deed in favour of the applicant society on the ground that it was not admissible as insufficiently stamped. He further alleged that the co-sharers of the vendors of the society filed suit O.S.No.573 of 1993 on the file of the IV Additional Judge, City Civil Court, Hyderabad, challenging the validity of the sale deed in favour of the society and was pending.

Respondents 4, 11, 14, 15, 20, 23, 24 and 26 filed a memo adopting the counter filed by the first respondent. 12th respondent (writ petitioner) filed a separate counter. His case was that, one, late Dr.Syed Hussain and late Meer Ahmed Ali Khan jointly purchased an extent of Acs.16.05 guntas of land covered by Sy.Nos.129/34 and 129/35 of Shaikpet village under a registered sale deed from the original owners. They agreed

to share the said property in 3:1 ratio. After the death of the said two persons, the property devolved on their respective legal heirs. Dr.Syed Hussain left behind him his widow, R30 herein, two sons, Syed Ali Hussain and Syed Nuzarath Hussain and four daughters, namely, Anees Mohammed, Dr. Shameen, Mrs.Naseem and Mrs.Razia. The other owner Meer Ahmed Ali left behind him his three sons R35 to R37. The 12th respondent obtained an agreement of sale, dated 05-03-1985, for an extent of 17000 square yards of the land out of the total extent of 28086 square yards from the three daughters and one son of late Dr.Syed Hussain, who were not parties to the sale deed or to the decree in O.S.No.146 of 1984 and therefore the decree in O.S.No.146 of 1984 was not binding on him. The vendors of R12 also filed a suit O.S.No.573 of 1993 on the file of the Additional Judge, City Civil Court, Hyderabad, for cancellation of the sale deed and the said suit was pending and therefore the application was liable to be dismissed with exemplary costs. R30, one of the vendors of the applicant, filed a separate counter. Her case was that her son, Syed Ali Hussain, filed a suit, O.S.No.1885 of 1987, on the file of the V Additional Judge, City Civil Court, Hyderabad, for partition and separate possession of his share wherein the applicant was also a party. No possession was delivered to the society and the applicant society itself tried highhandedly to grab the land from the possession of R30. Pursuant to the compromise decree passed in O.S.Nos.356 of 1992 and 357 of 1992 on the file of IV Additional Judge, City Civil Court, Hyderabad, an extent of 5000 square yards in plot No.9 was given to one, Riasath Begum and another extent of 5000 square yards of plot No.10 was given to Mohammed Abdul Rasheed in December, 1992. A suit was filed for cancellation of the decree in O.S.No.146 of 1984, by some of the co-sharers also and that suit was pending.

Respondent No.34, the State, filed a counter, through the Mandal Revenue Officer, Shaikpet, stating that as per the Town Survey Land Register, the land to an extent of 6 hectares 53 ares and 84 square meters, in Sy.Nos.129/34 and 129/35 correlating to T.S.No.4 was a patta land owned by Dr.Syed Hussain and that abutting the said patta land there was a Government land measuring Acs.81.68 sq. mtrs. in Sy.No.403 (part) correlating to block T.S.No.1, Block 'T', ward No.11 and that pattas were granted for about 242 beneficiaries of various bits in that Government land in 1986 and that subsequently some of the slum dwellers to whom pattas were not granted encroached into the adjacent patta land in Sy.Nos.129/34 and 129/35 and they have been residing there since a long time. On the basis of the above pleadings, the following issues were framed by the Special Court:

(1) Whether the applicant has title to the application schedule property?

(2) Whether the rival title set up by the respective respondents is true, valid and binding?

(3) Whether the respondents are land grabbers within the meaning of Act XII of 1982?

(4) Whether the applicant is entitled to any compensation and mesne profits as prayed for.

(5) To what relief?

At the time of enquiry, one witness was examined on the side of the applicant and Exs.A1 to A20 were marked. R1, R12 and brother of R30 were examined as R.Ws.1 to 3 respectively and Exs.B1 to B6 were marked. Appreciating the evidence on record, the Judicial Member of the Bench of the Special Court allowed the application while holding that the respondents were the land grabbers and the applicant had title to the application schedule property and that the rival title set up by the respondents was not true, valid and binding. However, the revenue member while concurring with the Judicial Member was of the view that the vendor of the applicant, R30, fraudulently managed to obtain an exemption order and in fact Government had no jurisdiction or authority to grant exemption and therefore her title over the property was defective and therefore the society could not get a better title to the application schedule land and more particularly in the wake of the pendency of the suit in O.S.No.573 of 1993 and O.S.No.146 of 1984. The learned revenue member further held that the respondents, who are in unauthorized possession, are liable for eviction from the application schedule land. In view of the divergence, the matter was referred to the Hon'ble Chairman of the Special Court, who concurred with the Judicial Member. Thus, the majority view of the Special Court was that applicant-society had title and that the rival title set up by the respondents was not true and valid and that the respondents were land grabbers.

Assailing the said judgment, the first respondent, O.Venkataramulu, filed Writ Petition No.19009 of 2000. The Petitioner in this Writ Petition is not a party to that Writ Petition. A co-equal bench of this Court heard the Writ

Petition and eventually dismissed while upholding the findings of the Special Court in favour of the applicant.

There has been overwhelming and unimpeachable evidence available on record in favour of the first respondent-society. The title of the first respondent-society has been upheld by the learned Special Court. The only ground on which the title of the first respondent is being sought to be impeached by the writ petitioner is that a suit for cancellation of Ex.A3-sale deed has been filed in O.S.No.573 of 1993 on the file of the Additional Judge, City Civil Court, Hyderabad. and is pending adjudication before that Court. That suit appears to have been filed by the three daughters and one son of late Dr.Syed Hussain for cancellation of the sale deed and for partition of the properties of their late father and for delivery of separate shares to them. In fact, earlier, one of the sons of late Dr.Hussain filed a suit in O.S.No.1885 of 1987 on the file of the V Additional Judge seeking identical reliefs and eventually that suit ended in dismissal. Ex.A19 is the judgment of the civil Court in O.S.No.1885 of 1987. All the pleas set-forth by the plaintiffs in that suit have been repelled by the civil Court. In that view of the matter the pendency of the suit, O.S.No.573 of 1993, is of no significance. That apart, R12 has no title. Admittedly, no sale deed has been executed in his favour. It is trite that agreement of sale will not confer any title. R12 claims to have purchased the property from one of the sons and three daughters of late Dr.Hussain under an agreement of sale, dated 09-03-1985. Apart from the validity or otherwise of the said agreement, having regard to the provisions of the U.L.C.Act, it has not been followed up by execution of any registered conveyance deed in his favour. Therefore, R12 cannot legitimately assail the title of the society passed under a valid registered sale deed executed by the Court on behalf of R30, the judgment debtor in the suit.

The way in which the parties are bent upon continuing the litigation so as to prevent the society from realising its purpose for which the property has been purchased is distressing. In that view of the matter, having regard to the overwhelming evidence available on record in favour of the society and in view of the finding of a co-equal bench of this Court, we have no hesitation except to concur with the finding of this Court in Writ Petition No.19009 of 2000.

For the above reasons, we see no error of jurisdiction that has been committed by the Special Court and, therefore, the writ petition must fail. The Writ Petition, therefore, is dismissed. However, there shall be no separate order as to costs.

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T.CH.SURYA RAO, J.

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G.CHANDRAIAH, J.

Dated _____ February, 2007.
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